

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2152 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHURABHAI H. DESAI

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR KV GADHIA for Petitioner

MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/01/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioner has challenged the judgement and award dtd.18.3.1991 passed by the Labour Court, Kalol in so far as the petitioner is not awarded full backwages and the award is only for reinstatement with 25%

backwages. The petitioner has also made a grievance that the Labour Court has not given an express direction to the respondent Gujarat Electricity Board for giving the petitioner continuity of service.

2. The petitioner was working with the respondent-Board on daily wages. The Board resorted to regular recruitment procedure and the petitioner was required to undergo selection procedure on 25.1.1982. The petitioner was selected for the post of driver and the Board issued appointment order dtd. July 21, 1982. The petitioner resumed duty on July 26, 1982 and also submitted his joining report. However, from July 27, 1982 the petitioner was not permitted to render his services and he was given an oral termination order on the ground that the said post was meant for a Scheduled Caste/Scheduled Tribe candidate. The petitioner, therefore, raised an industrial dispute which was referred to the Labour Court at Ahmedabad and which was thereafter transferred to the Labour Court, Kalol.

3. The petitioner's case was that the post was not reserved for Scheduled Caste/Scheduled Tribe candidates and that in any case once the appointment order was issued to the petitioner, the Board was bound to permit the petitioner to render his services as a driver. Since the termination was effected without holding any inquiry, the termination was illegal. It was also the case of the petitioner that assuming that the post in question was meant for the Scheduled Caste and Scheduled Tribe candidates in 1982, in any view of the matter in the year 1983, the Board had appointed as many as 11 drivers and some of them were from general category and they did not belong to any Scheduled Caste or Scheduled Tribe.

The Board contended that the post in question was reserved for Scheduled Caste/Scheduled Tribe candidates, but the Board did not controvert the petitioner's case that in the year 1983 about 11 persons came to be appointed as drivers from general category and not belonging to any Scheduled Caste or Scheduled Tribe. The Labour Court, therefore, came to the conclusion that the termination of the petitioner's services was illegal and, therefore, passed an order for reinstatement. However, only 25% backwages were awarded on the ground that the workman had put in only one day's service.

4. The learned Counsel for the petitioner submits that when the Labour Court found that the petitioner's services were illegally terminated, the Labour Court ought to have passed an order for reinstatement with

continuity of service and with full backwages. It is further submitted that in any view of the matter the Labour Court ought to have granted the petitioner continuity of service with effect from 1983 as a general category driver was appointed by the Board.

5. On the other hand, the learned Counsel for the Board has submitted that when the post in question is reserved for Scheduled Caste and Scheduled Tribe candidates, the termination of the petitioner's services in the year 1982 was justified as the appointment order was wrongly issued. The Learned Counsel for the petitioner has also supported the award of the Labour Court by contending that the same was passed on account of consensus between the parties and, therefore, it was not challenged for a period of two years.

6. Having heard the Learned Counsel for the parties, it appears to the Court that since there is no material or evidence on record in support of the submission that the award was based on consensus of the parties, the Court is not inclined to accept the said submission. When the award for reinstatement passed by the Labour Court is not challenged, it is not necessary for the Court to go into the contention raised on behalf of the Board that the termination was not illegal. In any view of the matter, the fact remains that the petitioner was not permitted to continue in employment in January 1982 onwards only on the ground that the post in question was reserved for Scheduled Caste and Scheduled Tribe candidates.

Once the petitioner was regularly selected and the employment was sought to be terminated only on the aforesaid ground, the petitioner was entitled to be appointed as a driver when the vacancy for the general category driver became available or at least when the respondent board filled the first vacancy from general category candidates in the year 1983. In this view of the matter, while directing the respondent to pay the petitioner 25% backwages with effect from the date on which the general category driver was appointed on 24.3.1983 in the O & M Circle Office of the respondent board at Mahesana, the Labour Court ought to have passed an award in favour of the petitioner directing the respondent board to give the petitioner continuity of service with effect from the said date i.e. 24.3.1983. The very direction to pay the petitioner 25% of the backwages implied that the petitioner was to be given continuity of service.

7. As far as the question of backwages is concerned, the Court is not inclined to interfere with the direction of the Labour Court to pay only 25% backwages to the petitioner. It is true that the Board did not prove that the petitioner was gainfully employed during the intervening period between January 1982/March 1983 and March 1991 i.e. upto the date of award. However, considering the fact that the petitioner was qualified to be a driver, it is quite probable that the petitioner may have been gainfully employed as a driver at least for a part of the intervening period. It appears that the interests of justice would be served if the Board is directed to give the petitioner continuity of service with effect from 24th March, 1983 for all purposes except for leave and the payment of 75% of the backwages, and in view of the delay in filing the petition, the petitioner shall not be granted arrears of difference of salary till the date of filing the petition (11.2.1993)

8. Accordingly the petition is partly allowed. The judgment and award dtd.18.3.1991 passed by the Labour Court, Kalol in Reference (L.C.K.) No.77 of 1985 is modified to the effect that the respondent-Board shall reinstate the petitioner in service with effect from 24th March, 1983 with continuity of service from the said date for all purposes except for the purpose of leave and payment of backwages. Though the petitioner shall be given notional increments for the period from 24.3.1983 onwards, the petitioner shall not be paid any arrears of difference of salary for the period till 11.2.1993 for the reasons stated in the preceding paragraph. As per the award of the Labour Court the respondent-Board shall pay only 25% backwages for the period between 24th March, 1983 and the date of the actual reinstatement. The aforesaid directions shall be carried out within two months from the date of receipt of the writ of this Court or a certified copy of this judgement, whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(M.S. Shah, J)
(Katira)